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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

In re K.P., a Person Coming Under the  
Juvenile Court Law.

2d Juv. No. B219772  
(Super. Ct. No. J-1285604)  
(Santa Barbara County)

SANTA BARBARA COUNTY CHILD  
WELFARE SERVICES,

Plaintiff and Respondent,

v.

ASHLEY P.,

Defendant and Appellant.

Ashley P. (mother) appeals the order of the juvenile court terminating her parental rights to her daughter, K.P., and establishing adoption as a permanent plan. (Welf. & Inst. Code, § 366.26.)<sup>1</sup> The sole issue on appeal is whether Child Welfare Services (CWS) complied with the Indian Child Welfare Act (ICWA) notice requirements. (25 U.S.C. 1901 et seq.; Welf. & Inst. Code, § 224 et seq.; Cal. Rules of Court, rule 5.480 et seq.) We affirm.

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<sup>1</sup> All statutory references are to the Welfare and Institutions Code unless otherwise stated.

## FACTS

We summarized the facts in greater detail in our opinion denying mother's petition for extraordinary writ review of the order terminating reunification services. (*A.P. v. Santa Barbara County Child Welfare Services* (Feb. 17, 2009, B216139) [nonpub. opn.].) Here, we repeat only that CWS detained 18-month old K.P. on September 4, 2008. She was hospitalized after ingesting prescription medication that her maternal grandmother had left within reach. The home in which K.P. lived with mother and maternal grandmother was filthy. K.P. was placed in foster care, and the juvenile court ordered six months of reunification services.

On May 14, 2009, the juvenile court conducted a six-month status review hearing and determined that mother had failed to meet her case plan goals. The court terminated reunification and set the matter for a section 366.26 hearing. It also found that ICWA did not apply, based upon oral representations made by family members at the hearing.

On October 1, 2009, the court held a section 366.26 hearing. It terminated parental rights and selected adoption as the permanent plan. Mother appeals from the order terminating her parental rights, asserting that the court failed to comply with ICWA notice requirements.

### *Notification of Indian Status*

CWS indicated in its detention report, dated September 9, 2008, that K.P.'s grandmother reported having Cherokee Indian heritage. Grandmother told the social worker that her family could trace their ancestry to Sitting Bull, but she did not know what tribe he belonged to. On the date of the CWS report, mother filed a Parental Notification of Indian Status (ICWA-020) stating that she might have Cherokee Indian ancestry, but also checked a box indicating she had no Indian ancestry. On October 9, mother filed an amended ICWA-020, indicating possible Cherokee Indian ancestry. Father also filed an ICWA-020, indicating he had no Indian ancestry.

Present in the courtroom at the hearing on the termination of reunification services (conducted on May 14, 2009), were mother, maternal grandmother, maternal

aunt and counsel for the maternal great-grandparents. The court noted that three generations of the family were present, and asked if any were enrolled members of the Sioux tribe, the Cherokee tribe, or any other federally recognized Indian tribe. An unidentified family member, grandmother, and counsel for the great-grandparents all answered "No." An audience member (whose relationship to mother was not specified) stated that the family was related to the Sioux Indians and to Sitting Bull. The court found that ICWA did not apply.

A contested section 366.26 hearing was held on October 1, 2009. After reviewing the reports of CWS and hearing mother's testimony, the court terminated mother's parental rights and selected adoption as the permanent plan. Mother appealed, asserting that the matter must be reversed for ICWA compliance. Mother argued that the juvenile court erred by making a finding that ICWA did not apply without giving notice to the federally registered tribes and the Bureau of Indian Affairs (BIA).

While the appeal was pending, we granted CWS's motion to augment the record with evidence of ICWA compliance. The augmented record indicated that, following the section 366.26 hearing, CWS gave notice to specified tribes and received responses that K.P. was ineligible for enrollment. A special interim hearing was held on February 25, 2010, in which the juvenile court reviewed this evidence and found that ICWA did not apply.

#### *Evidence of ICWA Compliance*

The record was augmented with an ICWA-030 form, filed February 4, 2010, giving Notice of Child Custody Proceedings for an Indian Child, scheduled for February 25, 2010. CWS determined that Sitting Bull was a member of the Standing Rock Sioux and mailed notice to the Standing Rock Sioux Tribe of North and South Dakota, the Cherokee Nation, the Eastern Band of Cherokee Indians, United Keetoowah Band of Cherokee, and the BIA. A letter from CWS informed the tribal representatives that the matter was on appeal on an ICWA issue, and advised of the date of the interim proceeding.

An attachment to the ICWA-030 contained all the required Indian heritage information for the maternal side of the family, including data concerning mother, the maternal grandparents, and all four of K.P.'s maternal great-grandparents. Responses were received from all the noticed tribes, indicating that K.P. was not a member or eligible for enrollment. At the interim hearing on February 25, 2010, the juvenile court found that ICWA did not apply. After CWS moved to augment the appellate record, mother's counsel informed this court by letter that she would not file a reply brief, because the issues she wished to address had been raised in her opening brief.

### DISCUSSION

ICWA imposes on the juvenile court and social services agencies an affirmative duty to inquire whether a child subject to a dependency proceeding is or may be an Indian child. (*In re K.M.* (2009) 172 Cal.App.4th 115, 118-119; *In re Desiree F.* (2000) 83 Cal.App.4th 460, 469.) For purposes of ICWA, an "Indian child" is one who is either a "member of an Indian tribe" or is "eligible for membership in an Indian tribe and is the biological child of a member of an Indian tribe." (25 U.S.C. § 1903(4).) Proper notice to tribes enables them to determine whether the child is or may become a member, and to assert their right to intervene in the dependency proceeding. (*In re J.T.* (2007) 154 Cal.App.4th 986, 994; *In re Samuel P.* (2002) 99 Cal.App.4th 1259, 1267.)

The object of tribal notice is to enable a review of tribal records to ascertain a child's status under ICWA. (*In re D.T.* (2003) 113 Cal.App.4th 1449, 1455.) The notice "must contain enough information to be meaningful. [Citation.] The notice must include: if known, (1) the Indian child's name, birthplace, and birth date; (2) the name of the tribe in which the Indian child is enrolled or may be eligible for enrollment; (3) names and addresses of the child's parents, grandparents, great grandparents, and other identifying information; and (4) a copy of the dependency petition. [Citation.] To enable the juvenile court to review whether sufficient information was supplied, [the agency] must file with the court the ICWA notice, return receipts and responses received from the BIA and tribes. [Citation.]" (*In re Francisco W.* (2006) 139 Cal.App.4th 695, 703.)

Here, the tribes received notice, accompanied by detailed information of K.P.'s maternal family. This included data on mother, maternal grandparents, and all four of K.P.'s maternal great-grandparents. All tribes responded that K.P. was not a member or eligible for enrollment. Mother's argument has been rendered moot because CWS complied with the ICWA notice requirements while the appeal was pending. (See *In re C.D.* (2003) 110 Cal.App.4th 214, 226.)

#### DISPOSITION

The judgment (order terminating parental rights) is affirmed.

NOT TO BE PUBLISHED.

COFFEE, J.

We concur:

GILBERT, P.J.

PERREN, J.

James E. Herman, Judge  
Superior Court County of Santa Barbara

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Roni Keller, under appointment by the Court of Appeal, for Defendant and Appellant.

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